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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/346,752 07/02/99 DELDUCA

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EXAMINER

CROSS, L

ART UNIT

PAPER NUMBER

1743

DATE MAILED:

05/23/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/346,752

Applicant(s)
Delduca et al

Examiner
LaToya Cross

Group Art Unit
1743



☒ Responsive to communication(s) filed on Mar 13, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1 and 11-21 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1 and 11-21 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

This Office Action is in response to Applicants' remarks filed on March 13, 2000 and entered as Paper No. 5. Claims 1 and 11-21 are pending in the instant application.

Status of Rejections from Previous Office Action

The rejection of claims 1 and 11-21 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' arguments that the amounts of components need to be present in the claims in order for the claims to be definite.

The rejection of claims 1, 12, 16, 17, and 20 under 35 U.S.C. 103 in view of Motoyama et al '442 and Nakoneczny et al '111 is withdrawn in view of Applicants' arguments that Motoyama et al '442 does not disclose that the reduction of oxygen in less than 90 minutes.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 11, 13-15, 17-19, and 21 remain to be rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,588,561 to Aswell et al (hereinafter referred to as Aswell et al '561).

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Applicants' claimed invention is directed to an oxygen scavenging packet comprising an oxygen permeable material formed into a closed packet, an oxygen absorber comprising iron within the closed packet, and a liquid oxygen uptake accelerator comprising water. The accelerator is present in an amount such that when the accelerator is contacted with the oxygen absorber, the oxygen content of a predetermined volume containing about 2% by volume oxygen to less than 0.5% by volume at a temperature of about 34°F in no more than 90 minutes.

Aswell et al '561 discloses a package for removing oxygen from a gaseous mixture. The package includes a gas impermeable sealable container having a sachet (packet) disposed therein. The packet contains an oxygen absorber such as iron (col. 3, lines 40-50). Also provided in the package is a carbon dioxide generator, such as an acid and a salt (col. 3, lines 51-68). Suitable acids include citric acid. Silica gel may also be added (col. 4, lines 4-6). Water (an uptake accelerator) is added to the oxygen absorber to activate the oxygen absorber and achieve sufficient oxygen reduction (col. 4, lines 53-56).

Aswell et al '561 differ from the instantly claimed invention in that the reference does not specifically state that 2% volume oxygen is reduced to less than 0.5% volume when the oxygen absorber is in contact with the uptake accelerator. However, at col. 4, lines 14-46, Aswell et al '561 discloses preferred amounts of oxygen absorber (iron) and uptake accelerator (water). Aswell '561 teaches the use of 25-35 percent by weight iron and about 60-80 percent by water. Applicants suggest that the use of 0.2-0.8mL of water per 2.5g of iron is sufficient to achieve the desired oxygen reduction (specification page 10). Thus, it is believed that the amounts of oxygen

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absorber and uptake accelerator as disclosed by Aswell '561 are suitable enough to provide sufficient oxygen reduction, absent evidence to the contrary.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 U.S.C. 103, in view of the teachings of Aswell et al '561.

Response to Arguments

3. Applicant's arguments filed March 13, 2000 have been fully considered but they are not persuasive.

Applicants' arguments concerning the rejection of claims 1, 11, 13-15, 17-19, and 21 under 35 U.S.C. 103 in view of Aswell et al '561 are directed to Applicants' assertion that "Aswell does not teach the claimed ratios of absorber to accelerator". Applicants' claims do not recite a ratio of absorber to accelerator (this recitation was deleted in the preliminary amendment). It is noted that, as Applicants point out, Aswell uses a greater amount of water than do Applicants. However, Applicants' have not shown the criticality of the amount of water and how a smaller amount of water will reduce oxygen quicker. Aswell et al '561 teaches that the goal of their invention is to attain less than 2% oxygen within the container in a period of less than about 2 hours (col. 4, lines 47-50). Thus, since Applicants attempt essentially the same idea, it is the position of the Examiner that the amount of water used as an oxygen uptake accelerator is not

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critical, absent evidence to the contrary. Thus, the claimed invention remains to be deemed obvious in view of Aswell et al '561.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is (703) 305-7360. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached at (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

LIC *SK*

May 18, 2000

Jill Warden
Jill Warden
Supervisory Patent Examiner
Technology Center 1700